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member **Michael C. Genest**

State of California  
**Franchise Tax Board**

## **February 2008 Franchise Tax Board Public Litigation Roster**

All currently active cases and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list of new cases that have been added to the roster for the month is also provided, as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: <http://www.ftb.ca.gov/law/litrstr/index.html>.

The Litigation Rosters for the last four years may be found on the Internet site.

**FRANCHISE AND INCOME TAX**  
**Closed Cases – February 2008**

**Case Name**

**Court Number**

NONE

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**FRANCHISE AND INCOME TAX**  
**New Cases – February 2008**

**Case Name**

**Court Number**

Banister, Joseph R.

Sacramento Superior Court Docket No. 07AS04091

Mickelsen, Paul L. & Patricia A.

Los Angeles Superior Court Docket No. BC385197

**FRANCHISE AND INCOME TAX  
MONTHLY REFUND LITIGATION ROSTER**

**February 2007**

**ABBOTT LABORATORIES & Affiliates v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC369808  
Court of Appeal, 2<sup>nd</sup> Appellate Dist. No. B204210

Filed – 04/20/07

*Taxpayer's Counsel*

J. Pat Powers  
Baker & McKenzie, LLP

*FTB's Counsel*

Brian Wesley

Issue: Whether Plaintiffs were entitled to a deduction under section 24402 after the statute was found to be unconstitutional.

Years: 1999-2000 Amount \$715,735.00

Status: Plaintiffs' Notice of Appeal filed on December 7, 2007.

**APPLE, INC. v. Franchise Tax Board**

San Francisco Superior Court Docket No. 08471129

Filed – 01/16/08

*Taxpayer's Counsel*

Jeffrey M. Vesely  
Pillsbury, Winthrop, Shaw, Pittman, LLP

*FTB's Counsel*

Kristian Whitten

Issues: 1. Whether the Franchise Tax Board properly determined the order in which dividends are paid from earnings and profits.  
2. Whether the Franchise Tax Board improperly allocated and disallowed interest.

Year: 09/30/89 Amount \$231,038.00

Status: Notice of Acknowledgment sent to Plaintiff on February 15, 2008.

**BAKERSFIELD MALL, LLC v. Franchise Tax Board**

San Francisco Superior Court Docket No. No. CGC07462728  
Court of Appeal, 1<sup>st</sup> Appellate District No. A119709

Filed – 04/25/07

*Taxpayer's Counsel*

Amy L. Silverstein, Edwin Antolin  
Silverstein & Pomerantz, LLP

*FTB's Counsel*

Marguerite Stricklin

Issues: 1. Whether the LLC fee imposed on an LLC doing business entirely within California by Rev. Tax. Code §17942 is unconstitutional under the due process, equal protection and commerce clauses of the U.S. Constitution.  
2. Whether Rev. Tax. Code §17942 violates Article XIII, section 26 of the California Constitution.  
3. Whether Rev. Tax. Code §17942 constitutes an invalid exercise of the states police power and is void.

Years: 2000 through 2004

Amount \$56,537.00

Status: Case Management Conference held and continued/bifurcated Court Trial set for April 3, 2008.

**BANISTER, JOSEPH R. v. Franchise Tax Board**  
Sacramento Superior Court No. 06CS00930  
Sacramento Superior Court Docket No. 07AS04091  
*Taxpayer's Counsel*  
Joseph R. Banister (Pro Per)

Filed – 07/10/06  
Transferred – 09/14/07  
*FTB's Counsel*  
Amy Winn

Issues: 1. Whether plaintiff has a California filing obligation.  
2. Whether penalties were properly assessed against plaintiff.

Year: 2002

Amount \$895.00 Tax  
\$537.50 Penalty

Status: No. 96CS00930:

First Amended Petition for Writ of Mandate filed on October 4, 2006. Defendant Franchise Tax Board and State Board of Equalization's Joint Demurrer to First Amended Petition for Writ of Mandate filed on November 1, 2006. Ruling on Demurrer filed on April 18, 2007; Respondent's Demurrer is overruled in part and sustained in part without leave to amend. Order filed on September 4, 2007; Court determined that the case is not a mandate proceeding, but as a civil action for a refund of taxes under Revenue and Taxation Code section 19382.

Docket No. 07AS04091:

Defendant's Case Management Statement filed on November 27, 2007. Notice of Motion and Motion of Defendant to Strike Demand for Jury Trial filed on February 19, 2008.

**BAYER CORPORATION v. Franchise Tax Board**  
Sacramento Superior Court Docket No. 07AS03350  
*Taxpayer's Counsel*  
Eric J. Coffill, Carley A. Roberts  
Morrison & Foerster, LLP

Filed – 07/23/07  
*FTB's Counsel*  
Steven J. Green

Issue: Whether the value of Plaintiff's inventory was properly calculated for each of the years for purposes of determining its cost of goods sold.

Years: 1993-1994

Amount \$2,481,551.00

Status: Case Management Conference held on February 21, 2008.

**BRAR, KALDEEP S. & IMELDA A. & PROFESSIONAL RESOURCE ENTERPRISES, INC. v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC365233

Taxpayer's Counsel

Robert F Klueger, Esq.

Boldra, Klueger & Stein, LLP

Filed – 01/24/07

FTB's Counsel

Mark P. Richelson

Issue: 1. Whether FTB properly determined the Los Angeles Revitalization Zone credit carryovers to which Plaintiffs were entitled.

Year: 1999

Amount \$335,885.53

Status: Defendant's Motion for Summary Judgment granted on January 23, 2008.

**BRATTON, KERRY M. v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC07461671

Taxpayer's Counsel

Thomas F. Carlucci

Foley & Lardner, LLP

Filed – 03/23/07

FTB's Counsel

Amy J. Winn

Issue: Whether the penalty for the promotion of an abusive tax shelter provided for in section 19177 was properly assessed to Plaintiff.

Year: 2003

Amount \$3,996,235.94 Penalty

Status: Trial rescheduled to March 26, 2008.

**CITY NATIONAL CORPORATION v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC334772

Court of Appeal, 2<sup>nd</sup> Appellate District No. B189240

California Supreme Court No. S150563

Taxpayer's Counsel

Kenneth R. Chiate, Mary S. Thomas

Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP

Filed – 06/10/05

FTB's Counsel

Donald R. Currier

Sherrill Johnson

Offices of the General Counsel

City National Bank

Issues: 1. Whether Plaintiff improperly engaged in tax shelter transaction involving Regulated Investment Trusts (REITs) and Regulated Investment Companies (RICs) during the subject years.  
2. Whether certain subsidiaries were exempt from California taxation as IRC 501(c)(15) entities.  
3. Whether Plaintiff has satisfied the requirement of exhausting all administrative remedies in order to maintain a lawsuit.

Years: 1999 through 2003

Amount \$84,676,129.00

Status: Case Management Conference continued to June 6, 2008.

**CITY NATIONAL CORPORATION & Subs. v. Franchise Tax Board**

Sacramento Superior Court Docket No. 06AS02275

Taxpayer's Counsel

Kenneth R. Chiate

Quinn, Emanuel, Urquhart Oliver & Hedges, LLP

Sherrill Johnson

Offices of the General Counsel

City National Bank

Filed – 06/06/06

FTB's Counsel

**Molly K. Mosley**

Issue: Whether Plaintiffs improperly engaged in tax shelter transaction involving Real Estate Investment Trusts (REITs).

Year: 2004

Amount \$23,900,000.00

Status: Discovery proceeding. Trial Setting Conference scheduled for June 2, 2008.

**COLGATE-PALMOLIVE, CO. & SUBSIDIARIES v. Franchise Tax Board**

Sacramento Superior Court Docket No. 03AS00707

Taxpayer's Counsel

Eric J. Coffill, Carley A. Roberts

Morrison & Foerster, LLP

Filed - 02/07/03

FTB's Counsel

Steven J. Green

Issues: 1. Whether the sales factor was properly calculated by excluding proceeds from short-term financial instruments and value added taxes assessed by foreign countries.  
2. Whether the property factor needs to be adjusted to value property at its appreciated value to fairly reflect its activities in California.

Years: 1974 through 1982, 1984 through 1987, 1989 through 1991

Amount \$2,912,696.00

Status: **Trial continued to October 25, 2009.**

**DELUCCHI, MARIO & KATHLEEN, et al. v. Franchise Tax Board**

Sacramento Superior Court Docket No. 06AS02661

Court of Appeal, 3<sup>rd</sup> Appellate District No. C056503

Taxpayer's Counsel

Harry Gordon Oliver II

Attorney at Law

Filed – 06/22/06

FTB's Counsel

George Spanos

Issues: 1. Whether Plaintiffs properly computed income on an installment sale.  
2. Whether Plaintiffs may be deemed to have elected out of the installment method.  
3. Whether Plaintiffs' gain on the sale of a stock qualified for exemption as Small Business Stock in 1995.

Year: 1995

Amount \$954,800.00

Status: Plaintiffs' Opening Brief filed on January 30, 2008.

**DELUXE CORPORATION v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC07462305

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin  
Silverstein & Pomerantz

Filed – 04/11/07

FTB's Counsel

Karen Yiu

Issues: 1. Whether the Franchise Tax Board has the authority to review the validity of enterprise zone credit vouchers issued by an enterprise zone.  
2. Whether the Franchise Tax Board properly disallowed enterprise zone credits claimed by plaintiff.

Years: 1999 through 2001

Amount \$979,741.00

Status: Order continuing Mandatory Settlement Conference continued to July 1, 2008, Trial continued to July 14, 2008. **Discovery proceeding.**

**DICON FIBEROPTICS, INC. v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC367885

Court of Appeal, 2<sup>nd</sup> Appellate District No. B202997

Taxpayer's Counsel

Thomas R. Freeman, Paul S. Chan,  
Bird, Marella, Boxer, Wolpert,  
Nessim, Drooks & Lincenberg, P.C.

Marty Dakessian

Mardiros, Hagop, Dakessian

Filed – 03/13/07

FTB's Counsel

Mark Richelson

Issue: Whether Franchise Tax Board properly denied EZ Credits claimed by Plaintiff.

Year: Ending 03/31/07

Amount \$1,104,992.00

Status: **Defendant/Respondent's Extension to File Opening Brief to March 14, 2008, filed on February 14, 2008.**

**DUFFIELD, DAVID A. & CHERYL D. v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC07459331

Taxpayer's Counsel

Jeffrey M. Vesely  
Kerne H. O. Matsubara, Annie H. Huang  
Pillsbury, Winthrop, Shaw, Pittman, LLP

Filed – 01/05/07

FTB's Counsel

David Lew

- Issues: 1. Whether Plaintiffs exchange of PeopleSoft Stock for the stock of Nevada Pacific Development Corporation qualified as a tax-free exchange pursuant to Revenue and Taxation Code section 17321.
2. Whether Plaintiffs were subject to the penalty imposed by section 19777.5.
3. Whether the penalty imposed by section 19777.5 meets Due Process requirements.
4. Whether Plaintiffs were entitled to an abatement of interest pursuant to Revenue and Taxation Code section 19104.

Year: 1994

Amount \$7,152,029.00 Tax  
\$4,006,972.25 Penalty

Status: Discovery proceeding. Order continuing Settlement Conference to April 1, 2008, and Trial continued to April 14, 2008.

**ELS EDUCATIONAL SERVICES, INC. v. Franchise Tax Board**

Sacramento Superior Court Docket No. 07AS0307

Taxpayer's Counsel

Robert R. Rubin

McDonough, Holland & Allen, PC

Filed – 07/05/07

FTB's Counsel

Robert Asperger

Issue: Whether Plaintiff was entitled for California purposes, to elect out of treatment provided by section 338(h)(10) of the Internal Revenue Code.

Year: 08/28/97

Amount \$630,615.97

Status: **Trial Setting Conference scheduled for June 16, 2008. Discovery proceeding.**

**FREIDBERG, EDWARD AND TRACI REYNOLDS v. Franchise Tax Board**

Sacramento Superior Court Docket No. 07AS02358

Taxpayer's Counsel

Edward Freidberg, Suzanne M. Alves

Freidberg & Parker

Filed – 02/02/07

FTB's Counsel

Amy Winn

Larry Keethe

Issue: Whether Franchise Tax Board was required to credit the amount of a non-final judgment to satisfy Plaintiffs' self-assessed taxes for years subsequent to those involved in the judgment.

Years: 2003 and 2004

Amount \$9,326.32 Penalty

Status: Trial scheduled for March 10, 2008. **Defendant's Motion for Judgment on the Pleadings denied and Plaintiff's Request for Judicial Notice denied on February 4, 2008.**

**GARCIA, W. ROCKE AND GLENDA L. v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC06456659

Taxpayer's Counsel

William J. McLean

A Professional Law Corporation

Filed – 10/02/06

FTB's Counsel

Kristian Whitten

- Issue:
1. Whether Plaintiffs timely acquired replacement real property in compliance with the Internal Revenue Code section 1033.
  2. Whether a decision by the State Board of Equalization precludes the assessment of penalties pursuant to section 19777.5.
  3. Whether the penalty assessed by Section 19777.5 satisfies due process requirements.

Year: 1992

Amount \$357,009.00 Tax  
\$259,056.00 Penalty

Status: Tentative Decision filed on January 24, 2008, in favor of Plaintiff.

**GENERAL MILLS, INC. & SUBSIDIARIES v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC05-439929

Filed – 03/29/05

Court of Appeal, 1<sup>st</sup> Appellate Dist. No. A120492

*Taxpayer's Counsel*

Thomas H. Steele

Andres Vallejo, Jeffrey S. Terraciano

Morrison & Foerster LLP

*FTB's Counsel*

Joyce Hee

**Paul H. Frankel**

**Morrison & Foerster LLP**

- Issues:
1. Whether the Plaintiffs' payroll factor was properly computed by excluding foreign employee stock options.
  2. Whether the Plaintiffs' sales factor was properly calculated by excluding receipts from commodities transactions and short-term financial instruments.
  3. Whether federal RAR adjustments were properly taken into account.

Years: 1992 through 1997

Amount \$3,950,026.00

Status: **Plaintiffs/Appellants' Pro Hac Vice Application granted on February 15, 2008, Paul H. Frankel is admitted as counsel.**

**GENERAL MOTORS CORPORATION, et al. v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC269404

Filed - 03/06/02

Court of Appeal, 2<sup>nd</sup> Appellate District No. B165665

California Supreme Court No. S127086

*Taxpayer's Counsel*

Charles R. Ajalat

Law Office of Ajalat, Polley & Ayoob

*FTB's Counsel*

Stephen Lew

Donald Currier

- Issues:
1. Whether gross receipts from the disposition of marketable securities were properly excluded from the sales factor.
  2. Whether interest income was properly characterized as business income.

3. Whether dividends received with respect to stock representing less than a 50% voting interest were properly classified as business income.
4. Whether the limitation on deductions prescribed by sections 24402 and 24410 resulted in unconstitutional discriminatory taxation.
5. Whether various receipts from intangible assets were properly excluded from the sales factor.
6. Whether research tax credits were properly limited to the entity incurring the expense.
7. Whether a deduction was properly denied with respect to foreign country taxes withheld on dividends.
8. Whether the taxpayer is entitled to an increased deduction with respect to depreciation on assets held by foreign country subsidiaries.
9. Whether the taxes determined to be owing by the Franchise Tax Board were properly computed and assessed.

Years: 1986 through 1988

Amount \$10,692,755.00

Status: Discovery Proceeding. Final Status Conference scheduled for September 29, 2008. Trial scheduled for October 1, 2008.

**GOLDEN WEST HEALTH PLAN, INC. v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC353849  
Court of Appeal, 2<sup>nd</sup> Appellate Court Dist. No. B205246

Filed – 06/15/06

Taxpayer's Counsel

FTB's Counsel

Alan R. Maler

Marla Markman

Greenberg Traurig, LLP

Issue: Whether Plaintiff made a valid S Corporation election for California purposes.

Years: 04/01/03 through 06/01/03

Amount \$669,045.00

Status: Defendant's Notice of Appeal filed on January 28, 2008.

**GONZALES, THOMAS J. II v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC06454297

Filed – 07/18/06

Taxpayer's Counsel

FTB's Counsel

Martin A. Schainbaum, Esq.

Jeffrey Rich

Martin A. Schainbaum, PLC

- Issues:
1. Whether a \$142,000,000.00 capital loss from an abusive tax shelter is allowable.
  2. Whether a taxpayer self-reporting under VCI is eligible for interest suspension pursuant to section 19116.
  3. Whether the taxpayer is entitled to deduct legal expenses paid in connection with an investment.

Years: 2000 and 2001

Amount \$12,374,510.00

Status: Discovery proceeding. **Trial rescheduled to August 18, 2008.**

**HANGER, DWIGHT T. & VICKI J. v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC382988

Taxpayer's Counsel

Gordon B. Cutler, Esq.

Filed – 12/28/07

FTB's Counsel

Anthony Sgherzi

Issue: Whether taxpayers constructively received the proceeds from the exchange of LLC memberships for stock in the taxable year.

Year: 2000

Amount \$324,908.00

Status: Summons and Complaint served on the Franchise Tax Board on January 23, 2008. **Case Management Conference scheduled for April 28, 2008.**

**HYATT, GILBERT P. v. Franchise Tax Board**

Clark County Nevada District Court No. A382999

Nevada Supreme Court No. 47141

Taxpayer's Counsel

Thomas L. Steffen &amp; Mark A. Hutchison

Hutchison &amp; Steffen, H. Bartow Farr III

Filed - 01/06/98

FTB's Counsel

James W. Bradshaw

McDonald, Carano,

Wilson LLP

Las Vegas, Nevada

Issues: 1. Whether Plaintiff was a resident of California from September 26, 1991 through April 2, 1992.  
2. Whether the Franchise Tax Board committed various torts with respect to plaintiff and is subject to a claim for damages.  
3. Whether the Nevada courts have or should exercise jurisdiction over the Franchise Tax Board.

Years: 1991 and 1992

Amount \$7,545,492.00 Tax  
\$5,659,119.00 Penalty

Status: Clark County Nevada District Court  
Trial scheduled for April 14, 2008.

**JURIKA, WILLIAM & MICHELLE, et al. v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC07466483

Taxpayer's Counsel

Arthur V. Pearson

Murphy, Pearson, Bradley &amp; Feeney

Filed – 08/22/07

FTB's Counsel

Joyce Hee

Issues: 1. Whether Plaintiffs' claims for refund were barred by the statute of limitation.  
2. Are Plaintiffs entitled to equitable relief from the statute of limitation.

Year: 2000

Amount \$914,777.00

Status: **Settlement Conference rescheduled to August 26, 2008**, Trial scheduled for September 8, 2008.

**KANCHANAPOOM, VISUT & MEECHI v. Franchise Tax Board**

Los Angeles Superior Court Docket No. NC050569

Taxpayer's Counsel

Kenneth J. Catanzarite

Richard Vergel de Dios

Catanzarite Law Corporation

Filed – 12/04/07

FTB's Counsel

Ron Ito

Issue: 1. Whether passive activity and capital losses from the disposition of partnership interests are deductible in the taxable years in issue.

Years: 1991 through 1995

Amount \$230,632.00

Status: **Defendant's Demurrer filed on February 25, 2008. Case Management Conference scheduled for April 9, 2008.**

**MANNING, LAWRENCE T. & JOY v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC382987

Taxpayer's Counsel

Gordon B. Cutler, Esq.

Filed – 12/28/07

FTB's Counsel

Anthony Sgherzi

Issue: Whether taxpayers constructively received the proceeds from the exchange of LLC memberships for stock in the taxable year.

Year: 2000

Amount \$167,710.00

Status: Summons and Complaint served on January 23, 2008. **Case Management Conference scheduled for April 28, 2008.**

**MERCURY GENERAL CORPORATION v. Franchise Tax Board**

San Francisco Superior Court Docket No. No. CGC07462688

Taxpayer's Counsel

Roy E. Crawford, Robert J. Waldow

McDermott, Will &amp; Emery

Filed – 04/25/07

FTB's Counsel

Julian Standen

Issues: 1. Whether a portion of Plaintiff's insurance subsidiary management expenses was properly disallowed under Rev. & Tax. Code § 24425.  
2. Whether the amnesty penalty under Rev. & Tax. Code § 19777.5 violates the due process clause of the U.S. Constitution, applies only retroactively, or attaches only after a liability becomes due and payable.

Years: 12/31/93 through 12/31/96

Amount \$7,585,601.28

Status: Discovery proceeding. **Hearing on Motion to Strike Portion of Complaint scheduled for March 27, 2008. Mandatory Settlement Conference continued to April 4, 2008. Trial continued to April 28, 2008.**

**MICKELSEN, PAUL L. & PATRICIA A. v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC385197

*Taxpayer's Counsel*

Charles P. Rettig, Esq.

Steven Toscher, Sharyn M. Fisk

Hochman, Salkin, Retigg, Toscher & Perez, P.C.

Filed – 02/08/08

*FTB's Counsel*

Donald R. Currier

**Issue:** Whether a taxpayer self-reporting under VCI is eligible for interest suspension pursuant to section 19116.

**Year:** 1999

**Amount** \$537,178.00 Interest

**Status:** Summons and Complaint filed on February 8, 2008, and served on February 27, 2008.

**MICROSOFT CORPORATION v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC08471260

*Taxpayer's Counsel*

James P. Kleier, Brian W. Toman

Reed Smith, LLP

Filed – 01/22/08

*FTB's Counsel*

Joyce Hee

Lucy Wang

**Issues:**

1. Whether royalty income received from licensing agreements with Original Equipment Manufacturers should be sourced outside of California based upon costs of performance.
2. Whether receipts from trading marketable securities should be included in the sales factor.
3. Whether the value of trademarks, copyrights, patents and other intangible assets should be included in the property factor.
4. Whether the taxpayer should be allowed a deduction under Revenue and Taxation Code section 24402 for dividends received for the years at issue.

**Years:** 1995 and 1996

**Amount** \$25,283,868.00

**Status:** Plaintiff's granted Defendant an Extension to March 7, 2008, to file Answer to Complaint.

**MIKE, ANGELINA v. Franchise Tax Board**

San Diego Superior Court Docket No. 37-2007-00067324-CU-MC-CTL

*Taxpayer's Counsel*

Richard M. Freeman, Carole M Ross

Sheppard, Mullin, Richter & Hampton, LLP

Filed – 05/25/07

*FTB's Counsel*

Leslie Branman Smith

**Issue:** Whether plaintiff's distribution of gaming income derived from revenue generated on a Native American reservation is exempted from California tax because plaintiff resided on the reservation of another tribe.

**Year:** 2000

**Amount** \$31,856.00

**Status:** Trial scheduled for September 19, 2008.

**MONTGOMERY WARD LLC v. Franchise Tax Board v. Franchise Tax Board**

San Diego Superior Court Docket No. GIC802767

Filed - 12/30/02

*Taxpayer's Counsel*Edwin P. Antolin, Amy Silverstein  
Silverstein & Pomerantz, LLP*FTB's Counsel***Stephen Lew**  
Domini Pham

- Issues: 1. Whether proceeds from the sale, maturity or other disposition of short-term financial instruments were properly excluded from the sales factor.  
2. Whether section 24402 Rev. & Tax. Code is constitutional.

Years: 1989 through 1994Amount \$2,694,192.00Status: Notice of Entry of Judgment for Plaintiff filed on January 15, 2008.**NEW GAMING SYSTEMS, INC. & AKA INDUSTRIES, INC. v. Franchise Tax Board**

Sacramento Superior Court Docket No. 03AS05705

Filed - 10/10/03

*Taxpayer's Counsel*Robert R. Rubin  
McDonough, Holland & Allen, PC*FTB's Counsel*

Amy Winn

- Issues: 1. Whether New Gaming Systems, Inc., timely filed its suit for refund for the income year ended March 31, 1996.  
2. Whether a declaratory relief action can be brought to prevent the collection of tax.  
3. Whether a suit for refund can be maintained for a year in which the amount of tax has not been paid in full.  
4. Whether Plaintiffs are liable for California taxes on income generated from leases for operating Indian casinos.

Years: 1996 and 1997Amount \$111,587.87Status: Trial set for July 23, 2007 postponed, date unknown.**NISSAN NORTH AMERICA, INC. v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC373781

Filed – 07/06/07

*Taxpayer's Counsel*Richard J. Ayoob  
Ajalat, Polley, Ayoob & Matarese*FTB's Counsel*Mark P. Richelson  
Ronald N. Ito  
Donald R. Currier

- Issues: 1. Whether claimed EZ credits were erroneously disallowed.  
2. Whether Value Added Taxes should be included in the denominator of the sales factor.  
3. Whether other errors were made in computing the taxpayer's tax.

Years: 04/01/01 through 03/31/02Amount \$725.632.00Status: Case Management Conference continued to March 5, 2008.

**NORTHWEST ENERGETIC SERVICES, LLC v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC05-437721

Filed – 01/15/05

Court of Appeal 1<sup>st</sup> Appellate Court Dist. No. A114805Court of Appeal, 1<sup>st</sup> Appellate Court Dist. No. A115841 (Attorneys' Fees)Court of Appeal, 1<sup>st</sup> Appellate Court Dist. No. A115950 (Attorneys' Fees)*Taxpayer's Counsel*

Amy L. Silverstein, Edwin Antolin

Silverstein &amp; Pomerantz

*FTB's Counsel*

Marguerite C. Stricklin

Issue: Whether Revenue and Taxation Code section 17942, which imposes a tax upon the "total income from all sources reportable to this state" of LLC registered with the Secretary of State, violates the Due Process Clause and Commerce Clauses.

Years: 12/31/97 through 12/31/01

Amount \$25,067.00 Fees  
\$ 3,764.29 Penalty

Status: **Plaintiff/Respondent's Petition for Rehearing filed on February 14, 2008. Defendant/Appellant's Opposition to Petition for Rehearing filed on February 27, 2008.**

**RIVER GARDEN RETIREMENT HOME v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC07467783

Filed – 10/02/07

*Taxpayer's Counsel*

Amy L. Silverstein, Edwin Antolin

Silverstein &amp; Pomerantz, LLP

*FTB's Counsel*

David Lew

Issues: 1. Whether Plaintiff is entitled to a dividend received deduction under Revenue and Taxation Code section 24402 for the years in issue.  
2. Whether the penalty imposed by Revenue and Taxation Code section 19777.5 was properly assessed.

Years: 1999 and 2000

Amount \$5,375.26 Tax  
\$ 895.93 Penalty

Status: **Demurrer Sustained Without Leave to Amend filed on February 8, 2008, as to the First Cause of Action, Second Cause of Action is overruled. Plaintiff's Objection to Exhibits B and C of Defendant's Request for Judicial Notice is granted.**

**ROHR, INC. v. Franchise Tax Board**

San Diego Superior Court Docket No. 37-2007-00070925-CU-CO-CTL

Filed – 09/07/07

Court of Appeal, 4<sup>th</sup> Dist., Div. 1 No. D052309*Taxpayer's Counsel*

Mark L. Mann

Luce, Forward, Hamilton &amp; Scripps LLP

*FTB's Counsel*

Brian D. Wesley

Issues: 1. Whether Rohr, Inc. was engaged in a unitary business with Rohr Credit Corporation, its subsidiary.  
2. Whether losses incurred by Rohr Credit Corporation constituted nonbusiness income.

3. Whether plaintiff is entitled to attorneys' fees.
4. Whether a suit for refund can be maintained where not all the interest due has been paid.

Years: 07/31/85 through 07/31/87

Amount \$5,155,415.00

Status: **Petition for Writ of Mandate denied. Request for Stay issued January 14, 2008, vacated on February 14, 2008.**

**SCHENCK, WILLIAM E & KARREN v. Franchise Tax Board**

Sacramento Superior Court Docket No. 07AS04188

Taxpayer's Counsel

Alvin R. Wohl

Palmer, Kazanjian, Wohl, Perkins, LLP

Filed – 09/14/07

FTB's Counsel

Molly Mosley

- Issues:
1. Whether Defendant correctly calculated the gain realized on the sale of property.
  2. Whether Defendant correctly asserted a penalty for failure to provide information.
  3. Whether Defendant properly assessed a penalty pursuant to Section 19777.5.
  4. Whether the taxpayers effectively elected installment sale treatment.

Year: 1999

Amount \$600,169.00 Tax  
\$150,042.25 Penalty

Status: Discovery proceeding.

**SHAW, BRIAN K. v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC378829

Taxpayer's Counsel

David Roth, Esq.

Hochman, Salkin, Rettig, Toscher & Perez

Filed – 10/10/07

FTB's Counsel

Diane Spencer-Shaw

- Issues:
1. Whether Plaintiff was a resident of California for tax purposes.
  2. Whether assessing a penalty under Revenue and Taxation Code section 19777.5 violates Due Process.

Years: 1990 through 1994

Amount \$487,084.00 Tax  
\$ 89,534.00 Penalty

Status: **Trial Setting Conference scheduled for July 31, 2008.**

**SHIMMON, EDWARD & ANNELIESE v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC363822

Taxpayer's Counsel

Charles P. Rettig, Sharyn M. Fisk

Hochman, Salkin, Rettig, Toscher & Perez, P.C.

Filed – 12/22/06

FTB's Counsel

Lisa W. Chao

Donald Currier

Issue: Whether a taxpayer filing under the first option of VCI was eligible for the interest suspension provided by section 19116.

Year: 1999 Amount \$515,422.00 Interest

Status: Order, Court Stay of Proceedings until June 12, 2008, pending State Board of Equalization's decisions in the VCI cases.

**THODE, JEROME P. & KATHLEEN A. THODE-FERRIS v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC383969

Filed – 01/17/08

Taxpayer's Counsel

FTB's Counsel

Gordon B. Cutler, Esq.

Anthony Sgherzi

Issue: Whether taxpayers constructively received the proceeds from the exchange of LLC memberships for stock in the taxable year.

Year: 2000 Amount \$137,694.00

Status: Summons and Complaint served on the Franchise Tax Board on January 23, 2008. **Case Management Conference scheduled for April 23, 2008.**

**TOY'S "R" US, INC. & AFFILIATES v. Franchise Tax Board**

Sacramento Superior Court Docket No. 01AS04316

Filed - 07/17/01

Court of Appeal, 4<sup>th</sup> Appellate Court No. C045386

California Supreme Court No. S143422

Taxpayer's Counsel

FTB's Counsel

Eric J. Coffill

Steven J. Green

Carley A. Roberts

Morrison & Foerster, LLP

Issue: Whether gross receipts from the sale of short-term financial investment were properly excluded from the documentation of the sales factor.

Years: 1991 through 1994 Amount \$5,342,117.00

Status: Case is transferred to the Court of Appeal on November 15, 2006, with directions to vacate its decision and to reconsider the cause of action in light of Microsoft v. Franchise Tax Board (2006) 39 Cal.4<sup>th</sup> 750 and General Motors v. Franchise Tax Board (2006) 39 Cal.4<sup>th</sup> 773. (Cal. Rules of Court, rule 29.3(d).)

**VENTAS FINANCE I, LLC v. Franchise Tax Board**

San Francisco Superior Court Docket No. 05-440001

Court of Appeal, 1<sup>st</sup> Appellate Court No. A116277 & A117751

*Taxpayer's Counsel*

Amy L. Silverstein, Edwin Antolin

Silverstein & Pomerantz, LLP

Filed – 04/01/05

*FTB's Counsel*

Marguerite Stricklin

Issue: Whether Revenue and Taxation Code section 17942, which imposes a tax based upon the "total income from all sources reportable to this state" of LLC registered with the Secretary of State, violates the Due Process Clause and Commerce Clause.

Years: 2001 through 2003

Amount \$29,580.00

Status: **Appellant/Defendant FTB's Opposition to Motion to Strike New Argument in Appellant/Defendant FTB's Reply Brief, Reply to Plaintiff/Respondent Ventas' Opposition to Appellant/Defendant FTB's Request for Judicial Notice filed on February 13, 2008. Court issued an order on February 26, 2008, deferring the Request for Judicial Notice and the Motion to Strike until the Court rules on the merits of the case.**